

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 92-023-R - ORDER NO. 93-904 ✓  
SEPTEMBER 27, 1993

IN RE: Application of South Carolina Electric & Gas Company for Adjustments in the Company's Coach Fares and Charges, Routes, and Route Schedules. ) ORDER  
 ) DENYING  
 ) PETITION  
 ) FOR  
 ) REHEARING  
 ) AND  
 ) RECONSIDERATION  
 ) OF  
 ) ORDER NO. 93-806

This matter comes before the Public Service Commission of South Carolina (the Commission) on the South Carolina Electric & Gas Company (SCE&G or the Company) Petition for Rehearing and Reconsideration of Order No. 93-806, which extended the Dial a Ride Transportation (DART) service to all of the residents of the Advocare Rehabilitation Center in Northeast Columbia.

First, SCE&G stated that the additional DART service required in Order No. 93-806 constitutes a violation of §58-5-290 of the Code of Laws of South Carolina, in that the operation of the Company's transit system under the conditions set forth in Order Nos. 93-806, 93-496, 92-929, and 92-781 would be unjust, unreasonable and non-compensatory, and would increase the Company's losses below the net negative return of (\$4,041,330) calculated by the Commission. The Company alleges that the

resulting transit rates are confiscatory and constitute violations of the Due Process and Taking Clauses of the United States and South Carolina Constitutions. The Commission rejects this allegation pursuant to the terms of State ex. rel. Daniel, Attorney General v. Broad River Power Company, et. al., 153 S.E. 537 (S.C., 1929), Broad River Power Company, et. al. v. South Carolina ex. rel. Daniel, Attorney General, 281 U.S. 528, and S. C. Code Ann., §58-27-120, which codifies the South Carolina Supreme Court's Broad River opinion. The effect of these opinions and this statute is to state that in this situation, SCE&G's predecessor company, the Broad River Power Company, had to operate a transit system, even though it was at a loss, since the transit system was inextricably bound to the Company's obligation to provide electricity to the City of Columbia. As has been stated in prior Commission Orders, the Commission believes that these cases and the statute based thereon mandate that, even though the transit operations of SCE&G may be operated at a loss, as long as the Company is operating the electric franchise in the City of Columbia, the Company must continue to operate the transit system, even if the rate of return is a net negative one. The Commission believes that this holding also includes the DART service. Therefore, this allegation by the Company is rejected.

Second, the Company alleged that the Commission lacks the statutory authority to order the Company to provide DART service outside of the federally-mandated area. The Commission rejects this allegation, and would state that, pursuant to S.C. Code Ann.,

§58-23-20, "no corporation or person, their lessees, trustees, or receivers shall operate any motor vehicle for the transportation of persons or property for compensation on any improved public highway in this State, except in accordance with the provisions of this Chapter, and any such operation shall be subject to control, supervision, and regulation by the Commission in the manner provided in this Chapter." (emphasis added) The Commission believes that, pursuant to this statute, the Commission has the full authority to set routes for all passenger service vehicles, including the DART system. Therefore, this allegation of the Company is rejected.

Third, the Company submitted that the Commission has no statutory authority to impose terms and conditions of transit service that exceed SCE&G's franchise obligations. For the reasons stated above in the prior paragraph, the Commission rejects this allegation as well. The Commission's police powers supersede any contractual rights held by SCE&G. See Anchor Point, Inc. v. Shoals Sewer Company and the Public Service Commission of South Carolina, \_\_ S.C. \_\_, 418 S.E.2d 546 (1992).

Fourth, SCE&G stated that Order No. 93-806 imposes service requirements outside the scope of the Company's franchise to provide transit services, which franchise contains no obligation to provide DART service. Once again, the Commission's statutory authority and police powers allow it to require the Company to provide such services as may be appropriate under the statutory law, including such routes as may provide transit services outside

the scope of the Company's franchise. See Anchor Point, Inc. above. Id. The Commission rejects this allegation as well.

Fifth, SCE&G submitted that the adoption of the DART service requirements in Order No. 93-806 is arbitrary and capricious and constitutes an abuse of discretion, and further, is not supported by substantial evidence on the record as a whole. The Commission noted in Order No. 92-929 that the Company has been providing DART service to several individuals outside the service area presently mandated by federal authorities. In that Order, the Commission held that the Company should continue to provide service to these individuals, in addition to the service provided to the federally mandated areas. In our Order Nos. 93-496 and 93-599, this Commission clarified Order No. 92-929, and stated that upon consideration, as a practical matter, it did not make sense for DART to serve only specific individuals in specific complexes being served by the DART service, and not other disabled individuals in those handicapped communities. The Commission, therefore, extended DART to all handicapped individuals in the Lakeside and Woods Edge areas of Harbison.

The Commission believes that similar reasoning is appropriate in the present case with the Advocare Rehabilitation Center. Clearly, the evidence showed that certain individuals were already being served in that Center. Again, it simply does not make sense to serve only a few individuals in a handicapped area when a large need and desire for the service may exist. Therefore, the Commission believes that it rightly in Order No. 93-806 extended

the DART service to all residents of the Advocare Rehabilitation Center. The Commission holds it had substantial evidence to make such a finding, and that the finding was neither arbitrary, capricious, nor did it constitute an abuse of discretion.

Sixth, the Company stated that proceeding to a final decision on the matters set forth in Order No. 93-806 without notice and hearing on the matters proposed constituted a violation of the South Carolina Administrative Procedures Act and several constitutional provisions. The Commission holds that no notice and hearing was necessary in the context of the present case. The Company suffered no prejudice because of the Commission's failure to hold a hearing, in that the Company was already providing DART service to the Advocare Rehabilitation Center. Thus, no trips were required to any different locations. The DART service was already traveling to the Advocate Rehabilitation Center. Therefore, no new issues were raised, and no violation of the Administrative Procedures Act, nor the constitutional provisions cited occurred. The Commission rejects this allegation.

Lastly, the Company submitted that Order No. 93-806 does not contain any findings of fact or conclusions of law supporting the matters decided therein as required by the Administrative Procedures Act. Seabrook Island Property Owners Association v. South Carolina Public Service Commission, \_\_\_ SC \_\_\_, 401 S.E. 2d 672 (1991) held that no particular format for setting forth findings of fact or conclusions of law was required, nor was it necessary that findings of fact and conclusions be stated or

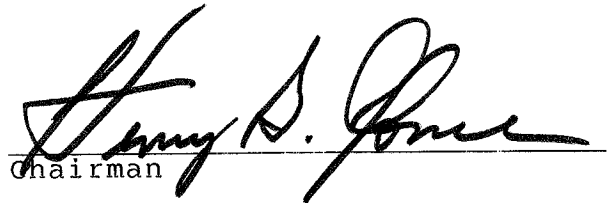
numerated under separate headings. An examination of Order No. 93-806 clearly reveals the factual findings of the Commission, and the resultant legal conclusions. Therefore, the Company's final ground in its Petition is without merit. Because of the reasoning stated above,

IT IS THEREFORE ORDERED THAT:

1. The Petition for Rehearing and Reconsideration of Order No. 93-806 is hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)